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February 28, 1997

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John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 565
Washington, DC 20554

Re: **MM Docket No. 96-134**
KCWB(TV), Kansas City, Missouri

Dear Mr. Karousos:

The purpose of this letter is to urge early action on the above-referenced pending rulemaking proceeding instituted by KCWB-TV, Inc. ("KCWB"), permittee of station KCWB, Channel 32, Kansas City, Missouri, to amend Section 73.606(b) of the Commission's rules to substitute Channel 29 for Channel 32 at Kansas City. See Kansas City, Missouri, 11 FCC Rcd 16254 (Chief, Allocations Br., released June 21, 1996) ("NPRM").

On April 30, 1996, KCWB, whose 1986 application to construct a new station on Channel 32 was granted in 1994, filed a petition requesting the substitution of Channel 29 for Channel 32 because no feasible site is available for operation of Channel 32 at Kansas City. Simultaneous with the filing of its petition, KCWB-TV filed both an application on FCC Form 301 for modification of its permit to specify operation on Channel 29, and a request for special temporary authority to operate on that channel with lesser facilities, until the tower to be utilized for Channel 29 could be modified to accommodate the antenna specified in the construction permit application.

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On June 21, 1996, your office issued the NPRM proposing to amend the NTSC Table of Allotments to substitute Channel 29 for Channel 32 at Kansas City. You tentatively concluded that KCWB had demonstrated that despite its diligent efforts, it is unable to operate on Channel 32 at Kansas City in compliance with the Commission's spacing requirements. You specifically found that the requested channel substitution was not prevented by the freeze on new TV channel allotments initiated to protect future digital television ("DTV") allotments, since it merely changes the frequency of an existing allotment. For the same reason, you further concluded that competing expressions of interest in Channel 29 at Kansas City would not be accepted. You also noted that since KCWB had never been on the air, a change in channels would not disrupt existing service. Finally, you determined that the substitution would serve the public interest by permitting the initiation of a new television service at Kansas City.

Miller Broadcasting, Inc. ("Miller"), licensee of KMCI, Channel 38, Lawrence, Kansas, and WDAF License, Inc. ("WDAF"), licensee of WDAF-TV, Channel 4, Kansas City, Missouri, filed comments and reply comments, respectively, opposing the NPRM. Miller claimed that because the Association for Maximum Service Television's January 13, 1995 DTV allotment plan paired DTV Channel 29 with Miller's NTSC Channel 38, action on the NPRM should be withheld. WDAF, filing after the August 14, 1996 release of the Sixth Further Notice of Proposed Rule Making in the Commission's DTV proceeding (FCC 96-317) ("Sixth Further Notice"), contended that since the Sixth Further Notice's draft DTV Table of Allotments allocates DTV Channel 29 to WDAF for use at Kansas City, "in keeping with the procedures adopted in the DTV proceeding, KCWB must now negotiate its proposed change with WDAF and all other licensees in the Kansas City vicinity." Alternatively, WDAF urged the Commission to view KCWB's petition as a counterproposal to the DTV channel plan set forth in the Sixth Further Notice.

On June 21, 1996, the same day that the NPRM was released, the staff of the Mass Media Bureau granted KCWB's STA request. One month later, on July 25, 1996, the FCC adopted the Sixth Further Notice. *Despite the NPRM's finding that no fully-spaced site is available from which Channel 32 can be operated at Kansas City, the Sixth Further Notice (at B-23) specifies a Channel 32 NTSC operation there, and pairs it with DTV Channel 31.*

On September 14, 1996, KCWB commenced operations on Channel 29 in accordance with the STA, and has broadcast a full programming schedule, including WB Network programming, since that date.

KCWB seeks early action on the NPRM as the only practical means of initiating full television service to Kansas City viewers. Such action now, before resolution of the issues raised in

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the Sixth Further Notice and issuance of a final DTV Table of Allotments, is fully warranted, for several reasons. First, in the Sixth Further Notice, the FCC specifically stated that it would not delay amendments to the NTSC TV Table of Allotments: "[a]ny petitions [to amend the Table] that are currently on file and any rule making proceedings that are currently open will be addressed on a case by case basis, taking into account the impact on the draft DTV allotment table." Sixth Further Notice at 26 para. 61. Indeed, new petitions that propose to alter the channel on which a station operates can continue to be filed and processed before the allotment phase of the DTV proceeding is concluded, with any such changes that include a modification of a station's authorization to be conditioned on the outcome of the DTV proceeding. Id. at 25-26 para. 61.

Second, the NPRM not only may be resolved before the DTV Table is finalized (as shown above), it should be resolved first. The draft DTV Table incorrectly assumes that NTSC Channel 32 will become operational at its currently authorized transmitter site, pairs that channel with DTV Channel 31, and (again incorrectly) assumes that Channel 31 can be activated from a site located within three miles of the currently authorized Channel 32 site. Sixth Further Notice at 23 para. 56, B-23. Thus, if the FCC postpones action in the present proceeding, KCWB could find itself without a viable NTSC or DTV frequency. If, however, the FCC allots NTSC Channel 29 to KCWB before the DTV Table is finalized, Channel 32 will become available for potential DTV use, and workable DTV frequencies can be assigned on a timely basis to both KCWB and WDAF.

Third, the substitution of Channel 29 for Channel 32 will not create a new allocation in Kansas City, or reduce the amount of spectrum currently available for DTV use there. Rather, the NPRM proposes a change in the frequency of an existing allotment, frees up the existing NTSC allotted frequency for potential DTV use and, as the NPRM acknowledges, is thus consistent with the Commission's current "freeze" on certain new television channel allocations.

Fourth, the objections of Miller and WDAF are meritless. Miller's claim is moot: the 1995 MSTV proposal on which it relies has been superseded by the November 22, 1996 proposal of MSTV and the Joint Broadcasters in MM Docket 87-268, which, like the Sixth Further Notice, proposes to allot DTV Channel 39, not 29, to Miller. As to WDAF's first contention, the FCC has not yet adopted its suggested in-market negotiation procedures, and in any case such procedures contemplate negotiations over DTV frequencies, not over an NTSC allotment such as the instant NPRM concerns. WDAF's further claim that the DTV allotment proceeding is the appropriate vehicle to resolve the NPRM should be rejected for two reasons. First, as shown above, the FCC expressly contemplated resolution of channel change petitions before the DTV Table is finalized. Second, the requested action could delay the NPRM's resolution for months or years: the Commission has made clear that the draft DTV Table of Allotments may undergo considerable

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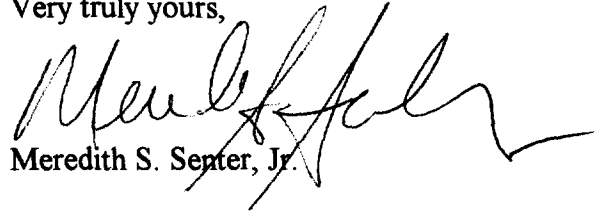
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revision before it becomes final. Sixth Further Notice at 15 para. 31, 37 para. 87, B-1. If, instead, NTSC Channel 29 were substituted now for NTSC Channel 32, this change can be taken into account in finalizing DTV allotments.

Finally and most important, it will disserve the public interest in general, and Kansas City television viewers in particular, to thwart the activation of a new full service local television facility by holding the present proceeding hostage to resolution of the DTV proceeding -- a process that could take years.

Accordingly, KCWB urges the staff to take early and favorable action on the NPRM so that full service can be immediately provided to the Kansas City community of license, including full WB Network service, as contemplated by the FCC's allotment and assignment principles.

Very truly yours,



Meredith S. Senter, Jr.



Barbara K. Gardner

cc: Christopher D. Imlay, Esq. (Counsel for Miller Broadcasting, Inc.)
Molly Pauker, Esq. (Counsel for WDAF License, Inc.)
Mr. Keith Larson
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